REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

JUDGMENT

Not Reportable

CASE NO. **D859/13**

In the matter between:-

TRANSNET SOC LIMITED t/a TRANSNET PORT TERMINALS **APPLICANT**

and

E PIETERSE **FIRST RESPONDENT**

THE TRANSNET BARGAINING COUNCIL **SECOND RESPONDENT**

MS V SONI N.O. **THIRD RESPONDENT**

Heard: 18 July 2014

Delivered: 7 August 2014

Summary: Condonation application – review application three and a half months late – long delay and unsatisfactory explanation.

Prospects of success - alleged that commissioner failed to assess the probabilities of the case and determined the matter on credibility findings

only – the probabilities support the credibility findings made by the Commissioner – no prospects of success – condonation application dismissed.

JUDGMENT

NAIDOO AJ

[1] This is an application in terms of s145 of the Labour Relations Act 66 of 1995 ("the Act"). The First Respondent ("the Employee") was dismissed by the Applicant ("the Employer") on 3 September 2012. The Employee referred a dispute to the Second Respondent which culminated in an arbitration award by the Third Respondent ("the Commissioner"). In an award dated 4 April 2013 and issued under case number 1673, the Commissioner found the dismissal to be substantively and procedurally unfair. The Employer was directed to *inter alia* reinstate the Employee retrospectively to the date of dismissal on the same terms and conditions which prevailed at the time. The Employer now applies for that award to be reviewed and set aside.

Condonation

[2] The review application was delivered on 30 August 2014, three and a half months outside of the statutory six week period. An application seeking condonation for the delay was delivered at the same time as the review application. The condonation application called upon the Respondents to deliver an answering affidavit within ten

days of delivery of the notice of motion.

[3] On 12 September 2013, the Employee delivered a notice of intention to oppose which states that "*the Applicant (sic) hereby enters an appearance to oppose the Respondent's (sic) application*". I assume that this was intended to mean that the First Respondent opposes the Applicant's application. Although the notice does not specify which application is opposed, it becomes clear from the affidavit filed thereafter that it was a reference to the review application only. The Employee delivered an opposing affidavit to the review application on 18 February 2014. At paragraph 5 of the opposing affidavit, the deponent states that "*At the hearing of this application, it will be argued that the review be dismissed with costs.*"

[4] The Employee's opposing affidavit in the review application should have been filed by 18 December 2013. It was accordingly delivered two months (thirty nine court days) outside of the period prescribed in the Rules of Court. The Employee has not sought condonation for the late delivery of his opposing affidavit.

[5] The Employer delivered its heads of argument on 30 June 2014 wherein it confirmed that "*no opposing affidavit has been delivered in respect of the condonation application and that it accordingly appears that the application will not be opposed*". The Employee delivered its heads of argument on 4 July 2014. The submissions contained therein are confined to the review application and makes no reference to the condonation application.

[6] At the hearing of the matter, Mr Hutchinson who appeared for the Employee indicated that the Employee opposes the application for condonation. It is not disputed that this opposition is not foreshadowed in the papers or in the heads of argument. Mr

Hutchinson was unable to tender an explanation for the failure to do so and merely indicated that he intended to argue the matter on the Employer's papers and to make legal submissions.

[7] This unconventional approach to motion proceedings is undesirable and should be discouraged. Generally, parties are confined to the factual evidence contained in the affidavits and the legal submissions contained in the heads of argument. At the very least, the heads of argument should serve as an indication of the issues which are in dispute and which a party intends to advance in argument. Apart from the fact that this approach ensures that parties are not taken by surprise on the day of the hearing, it also facilitates the expeditious resolution of the dispute. However, despite the Employee's failure to articulate his opposition in the prescribed manner, this court is nevertheless obliged to consider whether the Employer has made out a case for condonation for the late filing of the review application.

[8] In dealing with review applications brought in terms of s145(1) of the Act, this court is specifically empowered by s145(1A) of the Act to condone the late filing of a review application on good cause shown. In determining whether good or sufficient cause has been shown, the court has a discretion which must be exercised judiciously upon a consideration of all the relevant facts and based on fairness to both parties. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success and the importance of the case. Ordinarily they are inter-related and not individually decisive. (*Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A)).

[9] The six week period expired on 24 May 2013 and the review application is accordingly three and a half months late. Mr van Niekerk who appeared for the Employer concedes that it is a long delay. The explanation for the delay is contained in two paragraphs in

the affidavit filed in support of the application for condonation. In essence, the Employer contends that the person who received the award on 12 April 2013, did not have the authority to decide whether to abide by the award or to challenge it on review. It was accordingly necessary to refer it to the Employer's head office for this purpose where, as a result of "*work pressure and staff shortages*" nobody was able to attend to the matter until early July 2013. At this stage it was referred to the Employer's attorneys for an opinion which was received in the first week of July 2013. A decision based on the advice was only taken in mid August 2013 whereafter counsel was instructed to prepare the review application. The review and condonation applications were delivered on 30 August 2013.

[10] It is trite that an applicant for condonation must explain every aspect of the delay. It is clear from the explanation tendered that the bulk of the delay occurred prior to July 2013 when it was referred to the attorneys and then again for a period of more than a month before counsel was briefed to attend to the matter. There is no explanation for the latter aspect of the delay especially since the applicant would have been aware at that stage (at the latest) that the review application was already late.

[11] Mr Hutchinson has urged this court to refuse condonation solely on the basis that the delay is excessive and without having regard to the prospects of success. This approach finds support in the judgments of the Labour Appeal Court in *NUM v Council for Mineral Technology* [1999] 3 BLLR 209 (LAC) and *Moila v Shai NO & others* [2007] 5 BLLR 432 (LAC) amongst others. In those cases, the court held that where the period of delay is excessive and there is no reasonable and acceptable explanation for the delay, the prospects of success are immaterial. It is notable however that notwithstanding this approach, the court in both matters nevertheless considered the prospects of success.

[12] Whilst the delay of three and a half months in this matter is significant and the explanation therefor not altogether satisfactory, I am of the view that it is in the interests of both parties that a determination be made on the prospects of success in the review application. Unlike the condonation application, the merits of the review are fully canvassed on the papers and in argument before this court and warrant some consideration.

[13] I now turn to deal with the merits of the review application in order to determine whether the Employer's prospects of success are sufficient to compensate for a long delay and a poor explanation. If ultimately there are no prospects of success, the granting of condonation would be pointless (*Melane v Santam Insurance supra*)

Background facts

[14] The Employee was employed by the Employer in 1991. At the time of his dismissal on 22 September 2012, he held the position of chief supervisor.

[15] At the material time, the Employer utilized the services of Supercare in the Port of Richards Bay for the purpose of providing labour in order to perform cleaning services. The Complainant, Mr Sipho Mncube, was employed by Supercare and rendered cleaning services to the Employer at its export section. He was the team leader of employees who were tasked with cleaning an area at the export section which fell under the Employee's supervision.

[16] On 22 May 2013 the Employee reported to his manager, Mabika, that the Complainant be removed as team leader as the cleaning operations were not up to standard. Mabika

agreed that the Employee would inform the Complainant of the decision on the following day. On 23 May 2013, the Employee called the Complainant aside after the morning shift meeting and informed him that he was being relieved of his position as team leader. The Complainant was not happy with the decision but did not react at the time.

[17] Shortly thereafter the Complainant approached the Employee and informed him that he was feeling unwell and wanted to go home. When the Employee asked the Complainant why he came to work in the first place if he was not feeling well, the Complainant responded by swearing at him and saying "You are apartheid".

[18] The Employer called Mabika and reported the incident. Mabika told him to call the Complainant's manager at Supercare by the name of T-man Gumede ("T-man"). The Employer called T-man in the Complainant's presence and reported the incident. T-man requested the Complainant's SAP number. The Complainant refused to provide his SAP number and it had to be obtained from one of the employees in the nearby park-home. As the Employee left the park-home, he noticed the Complainant following him.

[19] The Employee's version is that he told the Complainant to wait at the park-home for T-man. The Complainant, who looked upset and aggressive, walked up to him and asked him why he had called him a kaffir. The Complainant then indicated that he was going to report the Employee to the police for calling him a kaffir. The Employee claims that he was taken aback by the accusation and immediately reported the incident to Mabika.

[20] The Complainant's version is that after the shift meeting on 23 May 2012, he reported to the Employee that he was not feeling well and requested to go to the clinic. The Employee accused him of not wanting to work. When the Complainant threatened to report him to Mabika, the Employee swore at him. The Complainant tried to call Mabika

and whilst he was doing so, the Employee called him a "fucking kaffir". Once again the Complainant did not react and simply left to go and get changed at the park-home. Whilst he was there, Sfiso Mbuyazi ("Mbuyazi") asked him why the Employee was swearing at him. The Complainant then pursued the Employee and asked him why he had called him a kaffir. When the Complainant told the Employee that he was going to report him to the police, the Employee grabbed him and slapped him in the face. The complainant called T-man and told him that he was going to the police. T-man said that he would not stop him as it was his right to do so.

[21] It is common cause that the Complainant reported the incident at the police station and that the police contacted the Employee during the course of the day to summon him to the police station. The Employee was accompanied by Mabika and Chilindi when he reported to the police station. On 24 May 2013, the Employee, accompanied by Chilindi, appeared in court where he was given several options which included the payment of an admission of guilt fine or mediation. The Employee chose the mediation option and the matter was adjourned to 31 May 2012 for this purpose.

[22] At the mediation which took place on 31 May 2012, the Employee was once again accompanied by Mabika and Chilindi. The Employee was informed by the prosecutor that if he paid a fine of R500.00 for pain and suffering, the case would be closed. He was subsequently told that the Complainant was not happy with the amount of R500.00. The Employee then allegedly insisted that he was not guilty and refused to pay the fine. The prosecutor once again sought to persuade the Employee to apologise and pay the sum of R500.00 in order to dispose of the matter. Mabika and Chilindi agreed that that would be the best option and on that basis, the Employee agreed to the deal. The Complainant refused to accept the money but notwithstanding such refusal, the Employee paid the sum of R500.00 which he was told would "go to the State" as the

Complainant did not want the money.

[23] During June 2012, the Employee was informed that the Complainant had referred the matter to the police in Empangeni as he was unhappy with the outcome at the court in Richards Bay. He was further told that the case would be re-opened and that his money would be refunded. The Employee reported the developments to the Employer on 6 June 2012 and he was placed on precautionary suspension later that same day. The criminal charges were ultimately withdrawn although he never received a refund of the R500.00.

[24] On 30 July 2012, the Employee was charged with misconduct in that it was alleged that he "*assaulted one of Super Care Contracted (sic) to Transnet on 23 May 2012*" and summoned to a disciplinary enquiry on 6 August 2012. On 6 August 2012, the Employer issued the Employee with a second disciplinary notice which contained the same charge but which stipulated the date of the disciplinary hearing as 16 August 2012. On 27 August 2012, the Employer issued a third disciplinary notice for a hearing to be held on 3 September 2012 in respect of the following allegations of misconduct:

1. *On 23 May 2012, at around 08h00 you used racially abusive and derogatory language by calling Mr Sipho Mncube (a contractor to Transnet Port Terminals Super care) a* ***Kaffir****.*

2. *On 23 May 2012 at around 08h00 you physically assaulted the same Mr Sipho Mncube.*

3. *You deliberately misled the company and misrepresented you (sic) self by denying the above allegations whereas you had paid an*

admission of guilt for assault at the Local magistrate Court. This denial led to the Company incurring costs for polygraph tests.

[25] The Employee was found guilty of the first charge (using racially abusive and derogatory language) at the internal disciplinary enquiry and dismissed. He referred a dispute about the fairness of his dismissal to the Bargaining Council and the matter was arbitrated by the Commissioner.

[26] The Commissioner found the dismissal to be substantively and procedurally unfair and directed the Employer to *inter alia* reinstate the Employee retrospectively to the date of dismissal on the same terms and conditions which prevailed at the time.

Grounds of review

[27] In summary, the Employer submitted that the Commissioner's analysis of the evidence is irrational and that she had been overly reliant upon the witnesses' demeanour rather than the probabilities of the case. In amplification of such contention, the Employer relied upon the following submissions:

(a) The Commissioner failed to resolve the disputes in the versions by assessing the probabilities of the case.

(b) Instead, the Commissioner embarked upon a questionable assessment of the evidence of the witnesses which culminated in her preferring the evidence of the Employee to that of the Complainant and Mbuyazi.

(c) The Commissioner found the Employee to be a reliable witness mainly on the

grounds that he was married to an Indian woman and that he was a Jehovah's Witness.

(d) The Commissioner considered the Complainant to be a poor witness based on his failure to point out on a diagram where the witnesses had stood.

(e) The Commissioner's criticism that the Complainant did not report the incident "to his seniors at Transnet" is misplaced in that he reported the incident to his employer, Supercare, as well as the police.

(f) The criticism against the Complainant regarding the late adding of the charge of using derogatory words to the charge sheet is misplaced as the charge sheets are drafted by prosecutors based on what is contained in the police docket.

(g) Whatever the deficiencies in Mbuyazi's evidence, the Commissioner should rather have treated the evidence with caution rather than rejecting it.

(h) The Complainant's version is borne out by the fact that during the mediation process conducted by court officials, the Employee tendered an apology whereafter he agreed to pay the sum of R500.00 to resolve the matter and which the Complainant did not accept.

(i) The Commissioner committed a gross irregularity in the conduct of the arbitration proceedings in that she permitted the Employee's legal representative to cross-examine the Complainant in an overly aggressive and arrogant fashion to the extent that the Complainant felt as if he was being abused. She failed to intervene and protect the Complainant.

[28] In opposing the application for review the Employee advanced the following submissions:

(a) The Commissioner properly considered the probabilities and the probative value of all of the evidence before her in coming to the conclusion that she reached.

(b) The Commissioner considered a number of factors in finding the complainant to be a poor witness.

(c) The Commissioner was best placed to consider the evidence and reach the conclusion that the dismissal was unfair.

(d) The late addition of the charge pertaining to the use of derogatory words is one of the factors which support the probabilities that it was not a compelling charge.

(e) The reason for rejecting Mbuyazi's evidence was an important consideration in rejecting the evidence of the Complainant.

(f) The Commissioner took into account and weighed up the probative value and credibility of the witnesses who testified in coming to her finding.

(g) The Employer failed to discharge the onus of proving that the dismissal was procedurally fair.

(h) The events which took place during the mediation process should not be allowed into evidence in these proceedings.

(i) There was no previous history of a fractious relationship between the Complainant and the Employee.

(j) The Commissioner was best placed to make a determination on the credibility of the witnesses before her and accordingly this court should be loathe to interfere with credibility findings made by the person who had the benefit of observing the demeanour of the witnesses and hearing the evidence first hand.

Analysis

[29] Mr van Niekerk conceded that the application was framed in the form of a process related review but contended that it was still possible for such review to succeed provided that the finding is unreasonable. He agreed however that if this court came to the same finding on the evidence properly before the Commissioner, but for different reasons, then there would be no basis to interfere with the award. He maintained however that if the court applied the proper test, the outcome must be different.

[30] The main criticism of the award is that the Commissioner determined the dispute on credibility findings only and that she failed to properly consider the probabilities as she was required to do in the face of conflicting versions. The Employer referred to the case of *President of the Republic of South Africa and others v South African Rugby Football Union and others* 2000 (1) SA 1 (CC) which cautions against the danger of determining the truthfulness or untruthfulness of a witness by relying upon the demeanour of a witness alone without regard to other factors, especially the probabilities.

[31] I agree that it is generally undesirable to rely on credibility findings as the sole basis for

assessing the probative value of evidence. (*Stellenbosch Farmers Winery Group Ltd and another v Martell et Cie and others* 2003 (1) SA 11 (SAC))**.** Whilst the Commissioner makes a number of findings regarding the demeanour and accordingly the credibility of the witnesses, the issue to be determined is whether she failed to have regard to the other factors and thereby deprived the Employer of a fair hearing. That might well be the case if her finding on credibility is at odds with this court's findings on the probabilities of the different versions.

[32] The Employee relied upon various authorities which caution against a review court interfering with credibility findings in circumstances where the Commissioner had the benefit of observing and assessing the witnesses during their evidence. I agree that credibility issues are indeed difficult to determine in motion proceedings but this court is not obliged to accept the Commissioner's findings if they do not appear to be justified.

[33] As was said by Van Zyl J in the judgment in *Foodworld Stores Distribution Centre (Pty) Ltd & others v Allie* [2002] 3 All SA 200 (C), cited with approval by Navsa JA in *Allie v Foodworld Stores Distribution Centre (Pty) Ltd & others* 2004 (2) SA 433 (SCA) at 442 para 38:

> 'Of course, the judicial officer, who has sight of the witnesses and is able to assess their evidence from nearby, is the best person to guage their demeanour. The record of such evidence, however, speaks for itself. If a witness is mendacious, contradictory or evasive, this will appear from the record. And if a judicial officer has justified criticism of a witness or of his or her evidence, the justification for such criticism will normally also appear from the record. Even more so will this be the case when a credibility finding is made against a particular witness. Although a court of appeal is

> reluctant to interfere with credibility findings made by the court of first instance, it is not obliged to accept such findings if they should not appear to be justified.'

[34] The record of the evidence does not cast the Complainant in a positive light. He is initially reluctant to give evidence without the aid of his written statement. Despite the fact that the proceedings are interpreted for his benefit, he either refuses to answer some of the questions or is evasive in response to others.

[35] Mr van Niekerk was at pains to emphasise the relative lack of sophistication which may have rendered the Complainant and Mbuyazi unable to make sense of a two-dimensional drawing. He submitted that the Commissioner failed to make allowances for the fact that they might not have understood the sketch and were accordingly unable to identify where the various people stood during the incident. This might have been a valid criticism if the Complainant was presented with the sketch for the first time during cross-examination. This was however not the case. It is common cause that he had agreed the accuracy of the sketch prior to the arbitration and was accordingly familiar with the sketch and what it sought to depict. Against this background, his refusal to identify where the various persons were located during the incident cannot be ascribed to a lack of comprehension. It is unclear from the record whether Mbuyazi also had the benefit of seeing the sketch prior to giving evidence.

[36] The content of the Complainant's written statement is also cause for concern. His account of the events starts with the alleged verbal abuse by the Employee after he reported that he was unwell. Mr van Niekerk confirmed that this court could accept the Employee's version that he had asked the Complainant to step down as team leader due to concerns about his work performance, that the Complainant was unhappy with

that decision and that the Complainant swore at the Employee and likened him to a racist by making reference to "apartheid". These events preceded the abuse allegedly directed at the Complainant.

[37] On this (agreed) version which does not feature in the Complainant's statement or in his evidence at the arbitration, it would appear that the Complainant fired the first salvo in respect of the verbal abuse and was undoubtedly the aggressor at this stage. As a consequence thereof, the Complainant found himself in the unfortunate position of having sworn at his superior, accused him of being a racist, being reported to his employer (Supercare), and faced the prospect of being removed from site and possibly disciplined.

[38] Another aspect which is not disputed but which does not feature in the Complainant or Mbuyazi's evidence at the arbitration is that the Complainant had a discussion with Mbuyazi about the Employee prior to confronting him about allegedly calling him a "kaffir". This appears from the Complainant's written statement. The Complainant then sought a confrontation with the Employee which Mr van Niekerk highlighted as a factor in favour of the Complainant's version. Given the fact that the Complainant was already in trouble with his employer, it is equally probable that he did so in order to provoke an altercation with the Employee which would have detracted from his own wrongdoing.

[39] On the Employee's version, he did not react other than to report the incident to his manager. This response from the Employee accords with his general demeanour as described by both the Complainant and Mbuyazi. The Complainant confirmed that he and the Employee did not have any problems during the time that they worked together. Mbuyazi testified that the Employee only raised his voice when some of the employees were not doing their jobs and that he never heard him do so in other circumstances.

The Employee testified that he did not swear and this was not disputed. It is also evident from his regular reports to his manager on the day that he appears to have strong regard for authority and following the correct processes in the workplace. Accordingly, the alleged misconduct seems inconsistent with his usual demeanour in the workplace. His conduct in calling the Complainant aside in order to inform him privately that he was being relieved of his duties as team leader shows a high degree of sensitivity and consideration. If the Complainant's version is true then the Employee clearly acted contrary to his usual nature.

[40] The Employee's written statement is also more complete in that it includes all the details of what occurred on the day. His evidence at the arbitration was consistent with the content of the statement. The Complainant's statement on the other hand is selective is confined to those aspects which favour his version. His evidence at the arbitration followed a similar trend.

[41] Mbuyazi's evidence is equally unreliable in that he also omits to mention the discussion with the Complainant which preceded the confrontation with the Employee. In fact, his evidence gives the impression that he was merely an independent bystander who happened to overhear part of the exchange. The reality is that the Complainant only confronted Employee after Mbuyazi enquired about the matter. Accordingly, he played a more active role than is apparent from his evidence.

[42] There are no redeeming features in the evidence of the Complainant or that of Mbuyazi which would suggest that the Commissioner had misdirected herself in her assessment of their evidence. I agree that the evidence of the Employee is more reliable.

[43] Mr Van Niekerk ask me to accept that the Complainant's refusal of the offer of R500.00 and pursuing the matter in the criminal courts are evidence of the truthfulness of his

version. I do not necessarily agree. The acceptance of the fine would have meant that the Employee would have returned to the workplace where he would have continued as the Complainant's supervisor. Clearly this would have been an untenable position for the Complainant especially if he had fabricated the complaint. It is also clear from the Complainant's evidence that once the Employee was dismissed, he was reinstated into his position as teamleader and that no disciplinary action was taken against him for his abuse of the Employee prior to the incident. So whilst it is possible that he was highly aggrieved by the Employee's conduct, it is more probable given his own conduct that a continued working relationship with the Employee had been rendered untenable and that he had no option but to pursue the complaint.

[44] On a consideration of the probabilities as well as the reliability of the different versions, I am of the view that the credibility findings by the Commissioner are reasonable in relation to the evidence before her. Whilst this Court might not have emphasized the same factors highlighted by the Commissioner, such difference in approach does not warrant a finding that the Employer was deprived of a fair hearing or that her findings are unreasonable.

[45] Mr Van Niekerk accepts that the Commissioner's criticism of the late addition to the charges was a reference to the disciplinary enquiry as opposed to the criminal matter. I agree that the Complainant is not responsible for the charge sheet and that he did in fact report the allegation regarding the racial abuse to the police on the day. Although the Employer did not advance any explanation for the various amendments to the charges, I do not necessarily agree with the Commissioner that there was some sinister motive involved.

[46] I am equally not persuaded that the cross-examination of the Complainant

compromised the quality of his evidence. The manner in which the evidence was conducted by both the Employer and Employee representatives left much to be desired for different reasons. Whilst the cross-examination was robust and rather clumsy, I would ascribe any shortcomings therein to lack of experience and proper legal training.

[47] I agree with Mr Hutchinson that no inferences should be drawn from the conduct of the parties during the mediation process. Those proceedings are intended to be without prejudice and are designed to resolve the dispute without subjecting the parties to the rigours of a criminal trial. It is however noteworthy that the Employee's version that he was persuaded by Mabika and Chilindi to resolve the matter by paying the fine was not disputed. It would accordingly be unfair of the Employer to hold this conduct against the Employee in those circumstances.

[48] In the absence of any evidence from the Employer on the complaint of procedural unfairness, the Commissioner's finding that the dismissal was procedurally unfair cannot be faulted.

[49] In those circumstances, I am in agreement with the Commissioner's finding that the Employer has not discharged the onus of proving that the dismissal was substantively and procedurally fair. I accordingly find that the review application does not have any prospects of success. This finding, coupled with the long delay and the unsatisfactory explanation means that the condonation application must fail.

[50] In a further objection which also did not feature in the Employee's papers, Mr Hutchinson contended that the Employer had delivered the record of proceedings outside of the time period provided for in the practice manual. Mr Van Niekerk indicated that he was unable to deal with the objection during the hearing as he was taken by

surprise. He requested that the matter be adjourned to afford the Employer an opportunity to consider the objection and to make written representations on the issue in the event that this Court intends to make a ruling on the point. Given my findings on the application for condonation, it is not necessary for me to make any finding in this regard.

Costs

[51] Whilst both parties have asked for costs, this matter was ultimately determined on the condonation application which was not properly opposed by the Employee. Accordingly, although the Employer was unsuccessful, I am of the view that it would be fair and equitable not to award any costs in this matter.

Order

[52] The condonation and review applications are dismissed with no order as to costs.

NAIDOO AJ

Acting Judge of the Labour Court of South Africa

Appearances

FOR THE APPLICANT:	Mr G O Van Niekerk SC
	Instructed by Woodhead Bigby & Irving
FOR THE FIRST RESPONDENT:	Mr W Hutchinson
	Instructed by Fluxmans Incorporated